



Reprinted
February 11, 2003

HOUSE BILL No. 1627

DIGEST OF HB 1627 (Updated February 10, 2003 6:31 PM - DI 75)

Citations Affected: IC 8-1.

Synopsis: Telecommunications services. States the authority of the utility regulatory commission relating to: (1) the unbundling of telecommunications services; and (2) establishing rates and charges for interconnection and network elements. Requires the commission to establish these rates and charges before January 1, 2004. Provides that the utility regulatory commission may not regulate a provider of high speed Internet access service or broadband service. Provides that the commission's lack of jurisdiction over high speed Internet access or broadband service does not relieve an incumbent local exchange telecommunications service provider of its obligation under the Telecommunications Act of 1996 to provide unbundled access to certain network elements to the extent specifically required by FCC regulations. Authorizes a provider of telecommunications services to take certain actions to persuade a customer who has switched to another provider to return to the original telecommunications provider.

Effective: Upon passage.

Mahern, Stilwell, Lutz J, Murphy

January 16, 2003, read first time and referred to Committee on Commerce and Economic Development.
February 3, 2003, amended, reported — Do Pass.
February 10, 2003, read second time, amended, ordered engrossed.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1627

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 8-1-2.6-9 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 9. (a) As used in this section, "standard**
4 **metropolitan statistical area" refers to those areas designated as**
5 **such by the federal Bureau of the Census and the Office of**
6 **Management and Budget.**
7 **(b) As used in this section, "unbundling" and "unbundled" have**
8 **the meanings set forth in the federal Telecommunications Act of**
9 **1996.**
10 **(c) As used in this section, "wire center" means a service area**
11 **of the incumbent local exchange provider as identified in its annual**
12 **filings with the commission.**
13 **(d) The commission may not, by entering an order, adopting a**
14 **rule, or otherwise taking an agency action, impose unbundling**
15 **requirements or develop new unbundled network elements beyond**
16 **those requirements and elements specifically required by**
17 **regulations issued by the Federal Communications Commission. If**

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the Federal Communications Commission removes a network element from its list of elements that are required to be unbundled, the commission may not require that element to be unbundled.

(e) When exercising its authority to determine rates and charges for interconnection, collocation, and network elements under the federal Telecommunications Act of 1996, the commission shall do the following:

(1) As to establishing recurring rates and charges:

(A) recognize all forward looking costs;

(B) base the factor of depreciation upon the actual lives of equipment and facilities that are reflected in the incumbent local exchange carrier's books of account as reported to the investment community under the regulations of the Securities and Exchange Commission, as applicable, but only if the books are maintained using generally accepted accounting principles for the facilities and equipment used in the provision of network elements subject to unbundling requirements;

(C) use fill and utilization rates or percentages of plant, facilities, and equipment that reflect the current actual fill and utilization rates or percentages to account for the costs of spare capacity in the networks of the incumbent local exchange carriers; and

(D) in calculating the cost of capital, use a market based evaluation that takes into account:

(i) the current cost of capital;

(ii) existing competitive risk;

(iii) the regulatory risks assumed and created by the Federal Communication Commission's unbundled network element costing methodology; and

(iv) the effect of increased risks because of customer bankruptcies and bad debt on the cost of capital.

(2) As to establishing nonrecurring rates and charges:

(A) recognize all forward looking costs, including all relevant costs of labor, including union wages and benefits, supervisory and management costs, and support costs;

(B) determine the amount of work time that is required for a particular activity based upon the amount of time used by a reasonably trained technician to perform that activity; and

(C) use fallout order rates based upon current actual fallout order rates experienced by the incumbent local

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1 exchange carrier.

2 When determining rates and charges under this subsection, the
3 commission may consider any other factors consistent with federal
4 law the commission considers appropriate in making a
5 determination.

6 (f) The commission shall use established costs and rates on a
7 going forward basis, and cost based rates currently in effect shall
8 be adjusted and become effective consistent with this section not
9 later than January 1, 2004.

10 (g) This subsection applies to circuit, analog, digital, and packet
11 switches. The commission may not require a telecommunications
12 provider, including the incumbent local exchange provider, to
13 unbundle its switches or switching facilities in:

- 14 (1) a wire center, if there is at least one (1) switch of another
15 provider located in that wire center area;
- 16 (2) a standard metropolitan statistical area in Indiana, if at
17 least two (2) switches of other providers are located within
18 that standard metropolitan statistical area; or
- 19 (3) a wire center located in a rural statistical area.

20 (h) An incumbent local exchange telecommunications service
21 provider subject to 47 U.S.C. 251(f) shall provide unbundled
22 network elements to the extent specifically required under Federal
23 Communications Commission regulations.

24 SECTION 2. IC 8-1-2.6-10 IS ADDED TO THE INDIANA CODE
25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
26 UPON PASSAGE]: Sec. 10. (a) As used in this section, "high speed
27 Internet access service" or "broadband service" means the services
28 and underlying facilities, regardless of the technology or medium
29 used, that:

- 30 (1) provide:
 - 31 (A) upstream, from the customer to the provider; or
 - 32 (B) downstream, from the provider to the customer;
- 33 transmission to or from the Internet; or
- 34 (2) have the capability to transmit information of more than
35 one hundred forty-four (144) kilobits per second.

36 (b) As used in this section, "provider" means an entity,
37 including a telecommunications carrier, that provides high speed
38 Internet access service or broadband service.

39 (c) The commission may not, by entering an order, adopting a
40 rule, or otherwise taking an action, impose a regulation upon a
41 provider in its provision of service.

42 (d) This section does not relieve an incumbent local exchange

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telecommunications service provider subject to the provisions of 47 U.S.C. 251(c) from the requirements to provide unbundled access to loops, subloops, collocation space, and all other network elements within the facilities of the incumbent local exchange telecommunications service provider:

(1) regardless of the technology or medium used to provide such services; and

(2) to the extent specifically required under Federal Communications Commission regulations.

SECTION 3. IC 8-1-2.6-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) As used in this section, "provider" refers to a provider of telecommunications services, including incumbent local exchange service providers and telecommunications carriers.

(b) As used in this section, "winback promotion" means the offering of discounted rates or other special offers to a customer who has decided to change, or has already changed, all or part of the customer's telecommunications service to another provider.

(c) Notwithstanding any other statute, a provider may offer winback promotions.

(d) The commission may not, by entering an order, adopting a rule, or otherwise taking an agency action, impose any of the following:

(1) A regulation regarding winback promotions. However, such a regulation may be imposed if the regulation is imposed equally and uniformly upon all providers.

(2) A regulation that requires a provider to wait more than three (3) days before the provider offers a winback promotion to a former customer.

(3) A regulation regarding winback promotions that unduly increases any provider's operating costs.

(4) A regulation or performance standards regarding the transfer of customers between providers. However, such a regulation or such performance standards may be imposed if the regulation or standards are imposed equally and uniformly upon all providers subject to the commission's jurisdiction.

(5) A regulation that requires a provider to make the winback promotion available to all existing customers or new customers.

(e) When a provider obtains information that a customer has

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1 changed to another provider, the initial provider may contact the
2 customer to confirm that the customer has made this decision.

3 (f) A provider may not refuse to transfer or facilitate the
4 transfer of a local exchange service customer of the provider to
5 another provider on the same terms and conditions as the provider
6 receives from any other provider, unless those terms and
7 conditions violate federal law.

8 SECTION 4. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1627, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, line 11, delete "or".

Page 3, line 14, delete "area." and insert "**area; or**

(3) a wire center located in a rural statistical area.

(h) An incumbent local exchange telecommunications service provider subject to 47 U.S.C. 251(f) shall provide unbundled network elements to the extent specifically required under Federal Communications Commission regulations."

Page 3, line 30, delete "commission" and insert "**following entities**".

Page 3, line 31, delete "agency".

Page 3, line 32, delete "service unless the regulation is" and insert "**service:**

(1) The commission.

(2) A municipality.

(3) A political subdivision."

Page 3, delete lines 33 through 35.

Page 4, line 33, delete "may" and insert "**has changed to**".

Page 4, line 34, delete "have decided to use".

and when so amended that said bill do pass.

(Reference is to HB 1627 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 11, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1627 be amended to read as follows:

Page 3, line 3, delete "basis" and insert "**basis**".

Page 3, line 35, delete "following entities" and insert "**commission**".

Page 3, line 37, delete ":" and insert ".".

Page 3, delete lines 38 through 40.

(Reference is to HB 1627 as printed February 4, 2003.)

MAHERN

HOUSE MOTION

Mr. Speaker: I move that House Bill 1627 be amended to read as follows:

Page 3, between lines 1 and 2, begin a new line blocked left and insert:

"When determining rates and charges under this subsection, the commission may consider any other factors consistent with federal law the commission considers appropriate in making a determination."

Page 3, line 5, delete "August 1, 2003." and insert "**January 1, 2004.**".

(Reference is to HB 1627 as printed February 4, 2003.)

MURPHY

HOUSE MOTION

Mr. Speaker: I move that House Bill 1627 be amended to read as follows:

Page 3, line 41, delete "An" and insert "**This section does not relieve an**".

Page 3, line 42, delete "shall" and insert "**from the requirements to**".



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Page 4, line 3, after "provider" insert ":

(1) regardless of the technology or medium used to provide such services; and

(2)".

(Reference is to HB 1627 as printed February 4, 2003.)

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